

Appl. No. : 09/557,234  
Filed : April 24, 2000

37. (New) The method of Claim 36 additionally comprising holding the elongate body at a generally horizontal attitude while advancing and retracting the nozzle.

38. (New) The method of Claim 37, wherein the elongate body is at least 18 inches long.

#### COMMENTS

In response to the Office Action mailed June 19, 2001, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments.

#### Specific Changes to Specification and Claims Shown on Attached Pages.

The specific changes to the specification and the amended claims are shown on a separate set of pages attached hereto and entitled **VERSION WITH MARKINGS TO SHOW CHANGES MADE**, which follows the signature page of this Amendment.

#### The Claims Are Patentable Over Proctor and Arnold

The Examiner rejected Claims 1-8 and 16-18 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,573,187 to Proctor, and rejected Claims 12-15 under 35 U.S.C. § 103(a) as unpatentable over Proctor in view of U.S. Patent No. 3,737,105 to Arnold. Some of the claims have been amended to define over the cited references, and Claims 4-6, 10 and 16 have been cancelled. All of the claims are currently believed to define over Proctor and Arnold.

Proctor discloses a handheld spraying apparatus 10 for cleaning holding tanks in recreational vehicles having a commode. Arnold discloses a spray nozzle for generating a double spray which extends around the entire periphery of the nozzle.

The spray apparatus 10 of Proctor is connectable to a garden hose 24 and includes an "on/off" valve 14 for controlling water flow. A flexible view port 16 is connected immediately downstream of the valve, and a rigid extended tube 18 is connected to the view port. As such, the apparatus includes a flexible portion.

The tube 18 turns 90° at an elbow 32 into a cylindrical shaft portion 36, which terminates almost immediately in a spray nozzle 20. The spray nozzle has a plurality of openings 38 positioned so as to produce a circumferential spray pattern.

In use, the spray apparatus is inserted down through the commode and into the holding tank before the valve is opened. Of course, in order to fit through the commode, the portion 36

Appl. No. : 09/557,234  
Filed : April 24, 2000

of the tube 18 distal of the elbow 32 must be quite short. In fact, if the distal portion 36 were more than just a few inches long, then the Proctor device would be inoperable for its intended use. As noted in Applicant's specification, and shown in the embodiment illustrated in Figures 1, 2 and 7A-B, a main body 28 (which is distal of a bend point 200) is about 1 foot or more in length. *See Specification, p.13, ll. 20-21.* This extended length serves a special purpose, enabling the nozzle portion 30 to be "maneuvered horizontally into and out of the plant." *See Specification, p. 7, l. 9.* Thus, this embodiment enables convenient and effective treatment deep into the plant. Nothing of the like is contemplated or enabled by the Proctor device.

Once the Proctor spray nozzle has been slipped through the commode into the holding tank, the valve is opened so that fluid can be sprayed into the holding tank. The flexible view port 16 allows a user holding onto the tube 18 to wiggle the apparatus within the tank so as to spray the fluid in all directions within the holding tank. *See Column 2, lines 26-35.* Of course, there is only limited movement of the apparatus within this confined space, and Proctor never contemplates moving or rotating the apparatus so that the spray nozzle 20 is above a user's head.

With the spray nozzle 20 within the holding tank, the user is protected by the tank from being sprayed by the spray nozzle. Otherwise, the spray would be directed right back at a user holding the tube 18. Thus, Proctor's spray apparatus can only be used when the spray nozzle is within an enclosed space such as the holding tank. Otherwise, the water will spray on the user.

Proctor, taken alone or in combination with Arnold, does not teach or suggest all of the limitations of the claims as presently constituted. Accordingly, Applicant respectfully requests that the Examiner withdraw the claim rejections.

The Claims Are Patentable Over the Kimbrew-Walter Roses "Jet-All" Sprayer

The Examiner rejected Claim 19 under 35 U.S.C. § 102(b) as anticipated by the Kimbrew-Walter Roses "Jet-All" sprayer, which was disclosed in an advertising flyer. The Examiner also rejected Claims 20-28 under 35 U.S.C. § 103(a) as unpatentable over the Jet-All sprayer in light of Proctor. Some of the Claims have been amended, and all of the claims are currently believed to define over to these references. In addition, Applicant respectfully traverses the Examiner's rejections and contends that there is no motivation to combine Proctor with the Jet-All sprayer.

Appl. No. : 09/557,234  
Filed : April 24, 2000

As stated in the flyer, the Kimbrew-Walter Roses "Jet-All" sprayer can be connected to a garden hose and is "designed to aid rose growers in the control of insects and spider mites. This unit has three jets positioned on a curved head to permit spraying under the leaves of miniature roses as well as the taller varieties without spray back on the user." See flyer (emphasis added).

The Jet-All sprayer does not appear to be acceptable for advancing the sprayer into the interior of bushes because its curved construction is likely to displace and, perhaps, damage portions of the bush. Accordingly, the flyer does not teach advancing the sprayer as such. Instead, it appears that the sprayer is drawn upwardly along a rose stalk from a low-lying portion of the stalk up to or near the upper end of the stalk. In this manner, the fan sprays work upwardly along one or a set of stalks at a time. The sprayer may be tilted during use from the position shown in the pictures (treating low-lying leaves) generally to the position shown in the sketch (to treat higher leaves). As shown in the flyer, the jets on the curved head are always directed upwardly and away from the handle throughout the range of tilt angles shown.

When using the Jet-All sprayer, the user must be careful to hold the device steady or risk missing or undertreating leaves because the Jet-All sprayer has only a limited spray range. For example, the user must not twist the handle excessively or else the jets of water may be directed sidewardly and will not treat the desired leaves.

The Jet-All sprayer is not used in accordance with the method of amended Claim 19. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection of this claim.

There is no Motivation to Combine the Proctor Device and the "Jet-All" Sprayer

The Jet-All sprayer serves a quite different purpose than the Proctor device, and has much different requirements. For example, as discussed above, the Jet-All sprayer is to be used in the open, and thus a key design feature is that it permits spraying "without spray back on the user." In contrast, Proctor specifically instructs to begin water flow only after the spray nozzle 20 is within the confined space of the holding tank. Otherwise, spray would be directed back on the user.

Additionally, the spray nozzle 20 of Proctor comprises a short, substantially straight cylindrical shaft portion 36. Substituting Proctor's spray nozzle 20 onto the Jet-All sprayer

Appl. No. : 09/557,234  
Filed : April 24, 2000

would eliminate the Jet-All's curved head, which is a lauded feature specifically designed into the Jet-All sprayer. See Jet-All flyer.

If the "circumferential spray pattern" of Proctor were applied to the Jet-All sprayer, water spray would be directed toward the user. For example, the Jet-All flyer shows a user holding the Jet-All sprayer with the sprays directed slightly upwardly from horizontal. If Proctor's circumferential spray pattern were substituted, then a spray would be directed nearly directly back at the user's feet. This extra spray would not treat any leaves and would get the user wet. Thus, combining Proctor's spray nozzle 20 with the Jet-All sprayer not only provides no benefit, but also causes a detrimental effect.

As discussed above, Proctor and the Jet-All sprayer serve different purposes and thus have completely different requirements. Substituting selected portions of Proctor would defeat specific design goals of the Jet-All sprayer. Accordingly, there is no motivation to combine these references. Even if these references were combined, however, they still would not teach or suggest all of the limitations of Claims 20-28. As such, Applicant respectfully requests that the Examiner withdraw the rejection of these claims.

#### New Claims

New Claims 29-38 have been added to more thoroughly claim the subject matter that Applicant considers to be the invention. New Claims 29-35 depend from currently pending claims, and recite additional patentable subject matter. New Claim 36 is an independent claim from which new Claims 37 and 38 depend. All of the new claims are considered to be in condition for allowance.

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections and objections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Appl. No. : 09/557,234  
Filed : April 24, 2000

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12/19/01

By:



Glen L. Nuttal

Registration No. 46,188

Attorney of Record

620 Newport Center Drive

Sixteenth Floor

Newport Beach, CA 92660

Appl. No. : 09/557,234  
Filed : April 24, 2000

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

The specific changes to the specification and the amended claims are shown on these pages. Insertions are shown double-underlined while deletions are ~~struck through~~.

**IN THE CLAIMS:**

Claims 1, 7, 8, 11, 12, 17-19, 22 and 23 have been amended as follows:

1. (Amended) A hand held spray apparatus for removing insects from and cleaning plant leaves, the apparatus comprising:

a substantially rigid tubular handle portion adapted to be connected to a source of pressurized water and having a substantially straight proximal section, a substantially straight distal section having a length of at least about one foot, and a bend point between the proximal and distal sections;

a nozzle portion at a generally distal end of the handle portion, the nozzle portion adapted to direct a flow of the pressurized water to create a substantially planar wall of water directed outwardly about the circumference of the nozzle, the wall of water being substantially perpendicular to a longitudinal axis of the nozzle portion, the handle portion and nozzle portion arranged so that the wall of water is directed generally away from the proximal section of the handle; and

a rotation axis defined parallel to the handle distal section and through a point adjacent a proximal end of the handle portion;

wherein rotating the apparatus about the rotation axis when the handle distal section is in a generally horizontal attitude changes the elevation of the distal section without changing its attitude.

7. (Amended) The apparatus of Claim 15, wherein the nozzle portion is adapted to create a second wall of pressurized water, the second wall being spaced from and substantially parallel to the first wall.

9. (Amended) The method apparatus of Claim 194, wherein at least part of the pressurized water flow is directed outwardly from the nozzle at an acute angle relative to a longitudinal axis of the nozzle.

Appl. No. : 09/557,234  
Filed : April 24, 2000

11. (Amended) The apparatus of Claim 41, wherein the nozzle portion is adapted to create a series of fan sprays of pressurized water directed in a plurality of substantially parallel, substantially vertical planes when the longitudinal axis of the body portion is substantially horizontal, the series of fans of water collectively spraying water outwardly around the circumference of the nozzle portion.

12. (Amended) The apparatus of Claim 41, wherein the nozzle portion comprises a tube and an end plug, the end plug having a plug body and a dispersing plate, at least a portion of the plug body lying within the tube, and a space defined between the dispersing plate and a distal end of the tube so that water flowing through the nozzle portion flows between the tube and the plug body and through the space.

17. (Amended) The apparatus-method of Claim 4619, wherein the handle portion and body portion are integrally formed.

18. (Amended) The method apparatus of Claim 4619, wherein the handle portion and body portion comprise a plurality of modules.

19. (Amended) A method for removing insects from and cleaning a plant having leaves, the method comprising:

providing a hand held spraying apparatus having a handle, an elongate body portion, and a nozzle portion at a distal end of the body portion, the nozzle portion adapted to direct water flow outwardly therefrom around the circumference of the nozzle portion;

providing a source of water under pressure;

placing the spraying apparatus into communication with the source of water under pressure;

positioning the nozzle adjacent an underside of a plant leaf so that a portion of the water directed by the nozzle impacts the leaf underside and a longitudinal axis of the nozzle is generally horizontally disposed; and

advancing and retracting the apparatus nozzle generally horizontally so that a flow of water impacts the leaf underside along its length.

Appl. No. : 09/557,234  
Filed : April 24, 2000

22. (Amended) The method of Claim 2021, wherein ~~at least one~~ of the substantially vertical planes is substantially perpendicular to the nozzle portion and comprising the step of holding the elongate body in a substantially horizontal attitude.

23. (Amended) The method of Claim 22, wherein the handle includes a bend point and comprising the step of adjusting the elevation of the body portion by rotating the handle about a proximal end of the handle.

H:\DOCS\GLN\GLN-3822.DOC.ca/gv,nl2.ca  
121601